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July 14, 2020

BY CM/ECF

Hon. Philip M. Halpern
United States District Judge
Southern District of New York
Daniel Patrick Moynihan United States
500 Pearl Street
New York, New York 10007

Application for a conference granted. A telephone conference has been scheduled for 7/17/2020 at 12:00 p.m. At the time of the scheduled conference, all parties shall call the following number: (888) 398-2342; access code 3456831. Defendants are directed to file a response to this letter by 7/16/2020 at 5:00 p.m.

SO ORDERED.

Philip M. Halpern
United States District Judge

Dated: New York, New York
July 15, 2020

**RE: *Eisen v. Cuomo, et al.*, No. 7:20-cv-5121-PMH-LMS
Letter Motion Seeking Expedited Conference on Proposed Order to Show
Cause and Supporting Papers (CM/ECF Nos. 18-21)**

Dear Judge Halpern:

This firm represents Plaintiff Joshua E. Eisen (“Eisen”) in the lawsuit referenced above. Last Friday, July 10, 2020, we filed, on behalf of Eisen, a Proposed Order to Show Cause and supporting papers (the “Proposed OTSC”). CM/ECF Nos. 18-21. We now file this Letter Motion pursuant to Rule 1 of Your Honor’s Individual Practices in Civil Cases (as revised April 9, 2020) to respectfully request an expedited conference with the Court to address the urgency of Eisen’s Proposed OTSC.

In this action, Eisen has presented constitutional challenges to New York’s ballot qualification requirements for independent candidates, as modified by Governor Andrew Cuomo’s Executive Order 202.46, in light of the COVID-19 pandemic. The suit contends that the current ballot qualification requirements for independent candidates, as modified by the Executive Order, violate Eisen’s constitutional rights under the First Amendment and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

Governor Cuomo’s Executive Order 202.46 set a new independent candidate nominating petition period from July 1 to July 30, 2020, during which time independent congressional candidates are required to gather and submit 2,450 “wet,” in-person signatures from registered voters using an in-person witness. In light of the COVID-19 pandemic and New York’s public health measures in response to the pandemic, Eisen is severely restricted in his ability to meet these onerous and hazardous ballot access requirements. We are now halfway through the petitioning period, and each day that passes, Eisen suffers irreparable harm to his constitutional rights. The Supreme Court has made clear that the “loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S.



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347, 373 (1976). Accordingly, we respectfully request that the Court hold an expedited conference at its earliest convenience to discuss Eisen's Proposed OTSC.

We thank the Court for its attention to this matter. Should the Court have any questions, we can be available at the Court's convenience.

Respectfully Submitted,

/s/ James E. Tyrrell III

James E. Tyrrell III

CC: All counsel of record via CM/ECF filing